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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,707	06/05/2001	Dan Kikinis	007287.00038	7928
22907	7590	03/04/2008		
BANNER & WITCOFF, LTD.			EXAMINER	
1100 13th STREET, N.W.			SALTARELLI, DOMINIC D	
SUITE 1200				
WASHINGTON, DC 20005-4051			ART UNIT	PAPER NUMBER
			2623	
			MAIL DATE	DELIVERY MODE
			03/04/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/875,707	KIKINIS ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Dominic D. Saltarelli	2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 December 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-27 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date: _____   | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

***Response to Arguments***

1. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new grounds of rejection.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-25 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wharton et al. (5,831,664, of record) [Wharton] in view of Darbee et al. (6,130,726) [Darbee] and Stautner et al. (6,172,677, of record) [Stautner].

Regarding claims 1, 9, and 17, Wharton discloses an entertainment system (figs. 1 and 2) comprising:

a unit configured to transmit information and to receiving information via a wireless connection (figs. 1 and 2, settop box 16); and

a plurality of hand held devices configured to simultaneously communicate with said unit (PDAs 12 shown in fig. 2), wherein each hand-held device of the plurality of hand-held devices comprises a control unit configured to interact with an application (col. 1 line 60 – col. 2 line 10 and col. 3 line 25 – col. 4 line 36), wherein selective programming of first hand-held device of the plurality of hand-

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held devices is communicated to the other hand held devices (col. 4, lines 15-30).

Wharton fails to disclose the application is an electronic program guide (EPG) and an indicator to indicate availability of an interactive function in a program corresponding to the EPG is displayed without providing an indication of the availability of the interactive function on a display configured to display the program corresponding to the EPG, the display being separate from the plurality of hand-held devices.

In an analogous art, Darbee teaches it was well known to use handheld devices to conveniently view program guide information (col. 6, lines 50-61 and col. 7 line 66 - col. 8 line 26), for the benefit of displaying program guide information without interrupting the display of programming on a television (col. 1, lines 29-39 and col. 2, lines 45-50).

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Wharton to use the handheld devices to view an EPG without displaying the EPG on the television, as taught by Darbee, for the benefit of displaying program guide information without interrupting the display of programming on a television, such as a situation where only one individual in a room with several others wishes to view program guide information.

Wharton and Darbee fail to disclose an indicator to indicate availability of an interactive function in a program corresponding to the EPG.

In an analogous art, Stautner teaches an EPG that includes indicators to indicate availability of interactive functions in programs corresponding to the EPG (fig. 2), providing an enhanced EPG with improved flexibility in providing access to information to users (col. 3 line 30 – col. 4 line 9).

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Wharton and Darbee to include an indicator to indicate availability of an interactive function in a program corresponding to the EPG, as taught by Stautner, for the benefit of providing an enhanced EPG with improved flexibility in providing access to information to users.

Regarding claims 2, 10, and 18, Wharton, Darbee, and Stautner disclose the system of claims 1, 9, and 17, wherein the indicator is displayed on a display of the first hand-held device (screen of the PDA, see Wharton, figs. 3a-f).

Regarding claims 3, 4, 7, 11, 12, 15, 19, 20, and 23, Wharton, Darbee, and Stautner disclose the system of claims 1, 2, 9, 10, 17, and 18, but fail to disclose the display of the first hand-held device changes background colors (flashes) or generates a sound to indicate the availability of the interactive function in the program corresponding to the EPG.

It is notoriously well known in the art to change the colors of a displayed background or to generate a sound in order to draw a viewer's attention to an object or occurrence of interest.

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Wharton, Darbee, and Stautner to include the display changes background colors or generates a sound, such as a beep or chime, to indicate the availability of the interactive function in the program corresponding to the EPG, as these is a conventional method used draw a viewer's attention.

Regarding claims 5, 13, and 21, Wharton, Darbee, and Stautner disclose the system of claims 1, 9, and 17, wherein the first hand-held device is a personal digital assistant (Wharton, fig. 1, PDA 12).

Regarding claims 6, 14, and 22, Wharton, Darbee, and Stautner disclose the system of claims 1, 9, and 17, wherein the first hand-held device is a web phone (Wharton teaches the PDA is an Apple Newton, col. 3, lines 26-54, a device capable of both telephonic communications and Internet access).

Regarding claims 8, 16, and 24, Wharton, Darbee, and Stautner disclose the system of claims 1, 9, and 17, wherein the indicator is a section of the apparatus that illuminates to indicate the availability of the interactive function in the program corresponding to the EPG (displayed icons are illuminated sections of a display, Stautner, col. 6, lines 8-24).

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Regarding claim 25, Wharton, Darbee, and Stautner disclose the machine readable medium of claim 17, wherein indicating the availability of the interactive function is performed in response to the interactive function becoming available (Stautner teaches interactive functions are coupled with particular programs, see fig. 2, and thus are only indicated as available once the corresponding program information has become available, making the interactive functions selectable, col. 6, lines 8-49).

Regarding claim 27, Wharton, Darbee, and Stautner disclose the machine readable medium of claim 17, wherein the information corresponding to interactions with an electronic programming guide includes user comments (Stautner's 'chat session' in fig. 3).

4. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wharton, Darbee, and Stautner as applied to claim 17 above, and further in view of Yen et al. (5,991,799) [Yen].

Regarding claim 26, Wharton, Darbee, and Stautner disclose the machine readable medium of claim 17, but fail to disclose whether an indication of the availability of the interactive function is provided to the display separate from the plurality of hand-held devices is configurable through the first hand-held device.

In an analogous art, Yen discloses a system wherein a user is provided the means to control whether information of interest to which the system is

alerted is displayed on screen (col. 11, lines 56-65 and col. 13, lines 28-48), for the benefit of granting a user additional control over the features of the interactive system (col. 3, lines 5-35, wherein a user can explicitly activate and deactivate the foreground element).

It would have been obvious at the time to a person of ordinary skill in the art to modify the machine readable medium of Wharton, Darbee, and Stautner to include means to control whether information of interest to which the system is alerted is displayed on the display, as taught by Yen, for the benefit of granting a user additional control over the features of the interactive system, as some users would be more interested in interactive features and thus would opt to have an onscreen display of such, and others lack interest in interactive features and would turn such alerts off.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dominic D. Saltarelli whose telephone number is (571) 272-7302. The examiner can normally be reached on Monday - Friday 9:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DS



JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600